

Served: March 25, 2003



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Application of Republic Airline, Inc.
d/b/a Republic Airlines
for a certificate of public convenience and necessity under 49 U.S.C. 41102
Docket OST-03-14579**

NOTICE PROVIDING ACCESS TO DOCUMENTS

On February 24, 2003, Republic Airline, Inc. d/b/a Republic Airlines filed the subject application for a certificate to engage in interstate scheduled passenger operations using 50-seat Embraer EMB-145 aircraft. Certain of the information filed in support of this application was accompanied by a motion under 14 C.F.R. 302.12 (Rule 12) of our regulations requesting confidential treatment.¹ Republic Airlines maintains that the documents for which confidential treatment is sought are proprietary, commercially sensitive, and confidential in nature and, therefore, qualify for being withheld from public disclosure.

Republic Airlines does not hold any authority at this time. It is, however, a sister company to Chautauqua Airlines, Inc., a commuter air carrier,² as both companies are wholly owned subsidiaries of Republic Airways Holding, Inc. (RAH). The scheduled passenger operations proposed by Republic Airlines will be conducted under the trade name "US Airways Express" pursuant to a Regional Jet Service Agreement between US Airways and Republic.³

On March 3, 2003, the International Brotherhood of Teamsters, Airline Division (IBT), the certified representative of the pilots of Chautauqua, filed a notice of appearance and request for

¹ Under Rule 12, Republic Airlines requested confidential treatment for the following documents: (1) Exhibit 3 which contains resumes and compliance information for two future key technical employees; (2) Exhibit 4 which contains information regarding the ownership of the applicant; (3) Exhibit 7 which contains financial information for the applicant's parent; (5) Exhibit 9 which sets forth the tentative aircraft delivery schedule; (5) Exhibit 15 which contains Republic Airlines' forecast income statement and balance sheet; (6) Exhibit 16 which contains information on Republic Airlines' ability to meet the Department's financial fitness criteria with respect to the applicant's proposed charter operations; and (7) Exhibit 19 which consists of the Republic-US Airways Regional Jet Service Agreement.

² Chautauqua's effective authority was issued by Order 81-7-42 on July 8, 1981. Chautauqua uses a mixed fleet of Embraer aircraft having a capacity of 37-50 passenger seats to conduct scheduled passenger operations under the trade names "Delta Connection," "American Connection," "America West Express," and "US Airways Express."

³ While Republic intends to conduct all of its scheduled passenger operations pursuant to the noted Regional Jet Service Agreement, it has also indicated that it intends to conduct limited charter operations independent of this agreement.

service of documents, as well as affidavits of confidentiality for two members of IBT's counsel. The affidavits filed indicated that the IBT desired access to the documents filed under seal in Docket OST-03-14579. This access was desired because the IBT, as the representative of Chautauqua's pilots, is an interested party to this proceeding. Further, these affidavits indicated that the counsel seeking access (William R. Wilder and Ernest E. Sowell) would use the information gained from viewing the confidential documents only for the purpose of participating in this proceeding and would not disclose this information to any person who has not also signed a confidentiality affidavit.

To date, no response to this request has been filed by Republic Airlines.

The Department has not yet reviewed the subject documents with respect to the question of confidentiality.⁴ However, in order to afford parties of interest in this docket prompt access to these documents, we will grant, under conditions set to maintain appropriate confidentiality, immediate interim access to the documents listed below by William R. Wilder and Ernest E. Sowell (the IBT counsel signing the affidavits submitted), or other interested parties who file appropriate confidentiality affidavits.⁵ The Affiants must understand and agree that any pleading or other filing that includes or discusses information contained in the covered documents must itself be accompanied by a Rule 12 motion requesting confidential treatment. The documents at issue may be examined by the Affiants at the Department of Transportation Dockets location. The parties will also be permitted to make copies of the documents for use by persons who have filed confidentiality affidavits.⁶ We also find it appropriate to grant interim access to any subsequent materials that may be filed in this docket under a Rule 12 motion to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance, unless the party filing the motion objects.

Affiants must present a stamped copy of the affidavit filed with the Department of Transportation before examination of the document. Immediately after the completion of any judicial review of our final decision in this docket, or the expiration of the 60-day period within which a person may petition for judicial review, all persons who have filed confidentiality affidavits in this proceeding are hereby directed to file a further affidavit stating that all copies of the documents have been destroyed or returned to the Department of Transportation.

⁴ We will rule on the merits of the Rule 12 motion at a later date.

⁵ We expect all affidavits to state, at a minimum, that (1) the affiant is counsel for an interest party or an outside independent expert providing services to such a party; (2) the affiant will use the information only for the purpose of participating in this proceeding; and (3) the affiant will disclose such information only to other persons who have filed a valid affidavit in Docket OST-03-14579. Affidavits must be filed in Docket OST-03-14579 with the Department of Transportation Dockets, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590.

⁶ This procedure is also consistent with earlier determinations. *See* Notice dated March 21, 2002, Docket OST-2002-11842 (Delta-KAL-Air France-Alitalia-CSA request for approval of and antitrust immunity for Alliance Agreements); Notice dated September 11, 2001, Docket OST-2001-10387 (American Airlines-British Airways request for approval of and antitrust immunity for an Alliance Agreement); and Notice dated March 5, 2003, Docket OST-2002-13089 (In the matter of the citizenship of DHL Airways, Inc.)

We will serve a copy of this notice on each of the parties in this proceeding.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

Date: **March 25, 2003**

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*

SERVICE LABELS FOR NOTICE

THOMAS M HANLEY
PRESIDENT & COO
REPUBLIC AIRLINE INC
2500 S HIGH SCHOOL RD STE 92
INDIANAPOLIS IN 46241

ERNEST E SOWELL ESQ
GENERAL COUNSEL
TEAMSTERS LOCAL 747
1419 FM 1960 ROAD
HOUSTON TX 77073

ROBERT E COHN
SHERYL R ISRAEL
CNSL FOR REPUBLIC AIRLINE INC
SHAW PITTMAN LLP
2300 N STREET NW
WASHINGTON DC 20037

WILLIAM R WILDER
BAPTISTE & WILDER
1150 CONNECTICUT AVE NW
SUITE 500
WASHINGTON DC 20036